



No. 63

April 22, 2004

## **S. 2329 — The Crime Victims' Rights Act**

*On April 21, 2004, S. 2329 was introduced in the Senate, read twice, and held at the desk by unanimous consent.*

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### **Noteworthy**

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- On April 21, the Majority Leader and the Minority Leader entered into a unanimous consent agreement that, if cloture is not invoked on the motion to proceed to S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004, then the Senate will proceed immediately to S. 2329, engage in two hours of debate with 30 minutes each controlled by Senators Kyl, Hatch, Leahy, and Feinstein, and then proceed to an immediate vote on final passage. No amendments are in order.
- S. 2329 is a statutory alternative to S.J. Res. 1, the Crime Victims' Rights Amendment, a bipartisan constitutional amendment introduced by Senators Kyl and Feinstein. Legislative Notice No. 62, released on April 21, 2004, discusses that proposed constitutional amendment.
- S. 2329, introduced by Senators Kyl and 22 original cosponsors, establishes statutory rights for victims of federal crimes and gives them the right to assert those rights in court.
- S. 2329 also requires detailed reports from the Attorney General, the Administrative Office of the U.S. Courts, and the General Accounting Office that will help Congress gauge the effectiveness of this legislation.
- S. 2329 authorizes \$16.3 million in FY 2005 and \$26.5 million for each of FY 2006, 2007, 2008, and 2009 to ensure that crime victims' rights are being protected.

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## Background

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According to the Department of Justice, more than 5 million violent crimes are committed in America every year.<sup>1</sup> For more than 20 years, activists and political leaders have been seeking to ensure that the victims of these crimes have protected rights in the criminal justice process. The rights they seek to have recognized are several:

- Victims seek a right to receive notice of public events related to the criminal prosecution, be that a bail hearing, a trial date, a sentencing hearing, or a later parole hearing.
- Victims seek a right to be present during those proceedings, and to have their voices heard at any stage in the process.
- Victims seek a right to receive notice when the criminal who victimized them is released on parole or escapes from prison.
- Victims seek a right to have their safety taken into account by courts and parole boards before a criminal suspect or convict is released.
- Victims seek a right to protection against unreasonable delays in criminal prosecutions.

These proposed rights would ensure that crime victims are not shut out of the process and that their legitimate interests are considered.

These rights have origins that date back to the beginning of our nation. In floor debate on a constitutional amendment to protect victims' rights in 2000,<sup>2</sup> Senator Feinstein explained that at the time of the Constitution's adoption, public prosecutors were rare; crime victims were considered "parties," and acted as their own prosecutors on criminal matters.<sup>3</sup> The Founders therefore had no need to create special protections for victims because the modern practice — public prosecutors who act independently of crime victims — was not foreseen. However, with the passage of time and the changes in criminal processes, these preexisting rights withered.

Public support for victims' rights protections is strong. For example, when Maryland voters considered a state constitutional amendment to protect victims' rights in 1994, it prevailed with 92 percent of the vote.<sup>4</sup> It is not surprising that 33 states have passed a variety of state constitutional amendments seeking to protect victims' rights, and that all 50 states have some form of victims' rights measures at a statutory or court-based level.<sup>5</sup>

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<sup>1</sup> Criminal Victimization in the United States for 2002, Bureau of Justice Statistics, Department of Justice (December 2003), at Table 1.

<sup>2</sup> See debate on S.J. Res. 3 (106th Cong.) in the *Congressional Record* for April 25-27, 2000.

<sup>3</sup> *Congressional Record*, April 25, 2000 (106<sup>th</sup> Cong., 2<sup>nd</sup> Sess.), at S2822 (discussing academic research on early American criminal prosecutions). Senator Feinstein amplified this point in a later speech on the floor on May 2, 2000.

<sup>4</sup> Maryland Board of Elections data, on file with Senate Republican Policy Committee.

<sup>5</sup> See S. Rept. 108-191, the Committee Report to S.J. Res. 1, the Crime Victims' Rights Amendment, at 3 (hereinafter "Committee Report"). For more information on the Crime Victims' Rights Amendment, see RPC Legislative Notice 62, issued April 21, 2004.

However, without the ability to enforce their rights in court, these crime victims' rights are merely words on paper. A study by the National Victim Center found that many victims were still being denied their rights, even in states having what appeared to be strong legal protection.<sup>6</sup> The study examined four states — two with relatively “strong” victims’ rights protections, and two with relatively “weak” protections. The findings were striking:

- Nearly half of the victims (44 percent) in states with strong protections for victims, and more than two-thirds of the victims in states with weak protections, did not receive notice of the sentencing hearing.
- Although the “strong” states had laws requiring that victims be notified of plea negotiations and the “weak” states did not, victims in all four states were equally unlikely to be informed of such negotiations. Laws requiring notification of plea negotiations were not enforced in *nearly half* of the violent-crime cases included in the study.
- Substantial numbers of victims in both “strong” and “weak” states were not notified of various stages in the process, including bail hearings (37 percent not notified in strong protection states, and 57 percent not notified in weak protection states); the pretrial release of perpetrators (62 percent not notified in strong protection states, and 74 percent in weak); and sentencing hearings (45 percent in strong, 70 percent in weak).<sup>7</sup>

A related report based on the same database found that racial minorities are most severely affected under the existing patchwork of victims’ protections.<sup>8</sup> In addition, the federal criminal code does not contain a comprehensive bill of rights for crime victims.

Although only a federal constitutional amendment truly can provide the substantial protections that crime victims deserve, an intermediate solution would be legislation that enhanced the state-based rights that already exist and extended those rights to federal crime victims.

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## **Bill Provisions**

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S. 2329 creates a set of statutory rights for victims of federal crimes and gives those victims the standing to enforce those rights in court. It also authorizes funding to assist federal *and state* crime victims to protect the rights granted through this legislation, as well as parallel rights granted through state statutes and constitutions.

### **The Creation of Rights for Federal Crime Victims**

As provided in Section 2 of the legislation, S. 2329 grants the victims of federal crimes the following rights:

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<sup>6</sup> U.S. Department of Justice, Office for Victims of Crime, “New Directions From the Field: Victims’ Rights and Services for the 21<sup>st</sup> Century” at 10 (1998); see Committee Report at 13-15.

<sup>7</sup> See Committee Report at 13-15.

<sup>8</sup> National Victim Center, “Statutory and Constitutional Protection of Victims’ Rights: Implementation and Impact on Crime Victims-Sub-Report: Comparison of White and Non-White Crime Victim Responses Regarding Victims’ Rights,” June 5, 1997, at page 5; see Committee Report at 14.

- (1) The right to be reasonably protected from the accused.*
- (2) The right to reasonable, accurate, and timely notice of any public proceeding involving the crime or of any release or escape of the accused.*
- (3) The right not to be excluded from any such public proceeding.*
- (4) The right to be reasonably heard at any public proceeding involving release, plea, or sentencing.*
- (5) The right to confer with the attorney for the Government in the case.*
- (6) The right to full and timely restitution as provided in law.*
- (7) The right to proceedings free from unreasonable delay.*
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.*

In addition to granting these rights, the legislation expressly requires the courts to ensure that victims are afforded these rights. Likewise, federal law enforcement officials are required to make their “best efforts to see that crime victims are notified of, and accorded” these rights. In the event that these rights are not respected, crime victims will have the right to assert these rights in court.

In addition, the legislation contains provisions to ensure compliance with these new requirements. The Attorney General shall issue regulations to enforce these victims’ rights in federal criminal cases, regulations that shall include proper Justice Department oversight, training, and disciplinary systems to ensure that the rights are being enforced. In addition, the Administrative Office of the United States Courts shall provide annual reports on how these statutory rights are being asserted and respected in the nation’s federal courts. Finally, the General Accounting Office shall conduct an independent progress report due three years from the enactment of this legislation.

### **Authorized Spending**

S. 2329 authorizes spending to ensure that victims’ rights are respected nationwide. The FY 2005 authorization is \$16.3 million. The majority of this authorization is funding that will ensure that victims have the wherewithal to enforce their rights in court.

*First*, the bill authorizes \$2 million for FY 2005 and \$5 million for each of FY 2006, 2007, 2008, and 2009 to United States Attorneys Offices to be used for Victim/Witnesses Assistance Programs.

*Second*, the bill authorizes \$2 million for FY 2005 and \$5 million for each of FY 2006, 2007, 2008, and 2009 to the Office of Victims of Crime of the Department of Justice for the enhancement of the Victim Notification System.

*Third*, the bill authorizes \$300,000 in FY 2005 and \$500,000 for each of FY 2006, 2007, 2008, and 2009 for the Office of Victims of Crime in the Department of Justice so that staff can administer the appropriation for the support of the National Crime Victim Law Institute or other organizations designated in the paragraph that follows.

*Fourth*, the bill authorizes \$7 million in FY 2005 and \$11 million for each of FY 2006, 2007, 2008, and 2009 to the Office of the Victims of Crime in the Department of Justice for the support of the National Crime Victim Law Institute and its operation of programs to provide counsel for victims in criminal cases for the purpose of enforcing crime victims' rights in federal cases, and in state or tribal cases where crime victims' rights that are substantially equivalent to those created by S. 2329 exist under state or tribal law.

*Fifth*, the bill authorizes \$5 million in each of FY 2005, 2006, 2007, 2008, and 2009 for "crime victims notification grants" to be made by the Department of Justice to state, tribal, and local prosecutors' offices, law enforcement agencies, jails, courts, and correctional institutions to develop and implement state-of-the-art systems for notifying victims of crime of important dates and developments.

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### **Administration Position**

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The Administration has not taken a position on S. 2329, but it has strongly supported a more aggressive approach that would grant victims these rights through a constitutional amendment. The President said this past weekend, "My Administration continues to endorse the bipartisan Crime Victims' Rights Amendment. By allowing victims of violent crime to be present and heard at public proceedings and by giving them access to information, such an amendment would guarantee victims' inclusion in the criminal justice process without threatening the rights of defendants."<sup>9</sup>

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### **Cost**

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The bill authorizes expenditures of \$16.3 million for FY 2005 and \$26.5 million for fiscal years 2006, 2007, 2008, and 2009. No monies are appropriated by this legislation.

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<sup>9</sup> Presidential Proclamation, April 17, 2004, available at [www.whitehouse.gov](http://www.whitehouse.gov).